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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 5, 2002

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William F. Caton
Acting Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20036

Re: Review of the Section 251 Unbundling Obligations of Incumbent Local
Exchange Carriers, CC Docket No. 01-338/

Dear Mr. Caton:

Attached for filing with the Commission in the above-captioned proceeding are the comments of Progress Telecom Corporation. These comments are being filed electronically in conformity with the Commission's Notice of Proposed Rulemaking in this docket. Please call the undersigned if you have any questions concerning the attached filing.

Sincerely,


Enrico C. Soriano

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Progress Telecom Corporation

CC Docket No. 01-338

Comments

April 5, 2002

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local Exchange)	CC Docket No. 01-338
Carriers)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act of)	CC Docket No. 96-98
1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	

COMMENTS OF PROGRESS TELECOM CORPORATION

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SUMMARY

In contravention of the law, several incumbent LECs, including BellSouth, recently have contrived another justification to deny a requesting carrier's request for unbundled network elements. These incumbent LECs refuse to provide UNEs to requesting wireline carriers for the purpose of connecting their collocation arrangements with their wireless customers' cell sites or base stations. They argue, among other things, that these facilities are not UNEs; that the Commission's "safe harbor" rules prevent them from providing these facilities; and that UNEs cannot be used to provide wireless services. None of these arguments have any factual or legal basis.

Specifically, the Communications Act, the *UNE Remand Order*, and the Commission's rules contemplate the unrestricted use and availability of standalone UNEs. Any restrictions on the use of UNEs, such as those suggested by the incumbent LECs, would fly in the face of the Commission's professed goals of encouraging the introduction of innovative technologies in all markets. Likewise, the provision of UNEs to connect wireless base stations does not implicate, much less violate, the Commission's "safe harbor" rules. Those rules govern *combinations* of UNEs, not standalone UNEs.

The Commission should continue to require the incumbent LECs to unbundle UNEs, including but not limited to, loop and dedicated transport—without which Progress Telecom is impaired in providing service to its customers, including its wireless provider customers. The findings and conclusions made by the Commission over two years ago when it required the unbundling of loop and dedicated transport, among other network elements, remain valid today.

Nothing has changed in the intervening years to compel the Commission to modify its prior policies and conclusions.

Accordingly, the Commission should steadfastly reject any attempt by the incumbent LECs to reduce the list of existing UNEs or otherwise restrict their use. More specifically, the Commission should reiterate that incumbent LECs are required to provide requesting telecommunications carriers access to UNEs, including loop and dedicated transport, regardless of how they are ultimately used, as long as they are used to provide telecommunications services. This obligation encompasses the provision of circuits connecting a wireline carrier's collocation arrangement and its wireless customers' cell sites.

Finally, Progress Telecom fully supports the positions and statements set forth in the comments of the Fiber/Switch-Based CLEC Coalition and CompTel.

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COMMENTS OF PROGRESS TELECOM CORPORATION

PROGRESS TELECOM CORPORATION ("Progress Telecom"), through its undersigned counsel, hereby respectfully submits its comments in response to the Federal Communications Commission's (the "Commission") *NPRM*¹ in this proceeding. As more fully set forth below, Progress Telecom urges the Federal Communications Commission (the "Commission") to continue to require incumbent local exchange carriers ("incumbent LECs") to

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-339; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Notice of Proposed Rulemaking (rel. Dec. 20, 2001) (*NPRM*).

provide standalone unbundled network elements (“UNEs”) to requesting telecommunications carriers—and in particular, unbundled dedicated transport and unbundled local loop—without any restriction on the type of service that can be provided over them. Specifically, the Commission steadfastly must require the incumbent LECs to provision to competitive local exchange carriers (“CLECs”), upon request, unbundled dedicated transport and unbundled local loop between the CLECs’ collocation arrangements and their wireless customers’ cell sites or base stations.

I. BACKGROUND AND SUMMARY OF POSITION

A. About Progress Telecom

Founded in 1998 and headquartered in St. Petersburg, Florida, Progress Telecom is a super-regional telecommunications provider offering wholesale telecommunications services throughout the Eastern United States. Progress Telecom incorporates approximately 130,000 fiber miles and 7,200 route miles in its network, including over 150 points-of-presence.

Progress Telecom’s fiber network serves as the backbone of OC-192 transport that allows customers enhanced data transport capabilities in the Eastern United States from New York to Miami, Florida, in first-, second-, and third-tier growth markets and access to Latin America through its international gateways. The network’s utility-based infrastructure also offers fast local loop access through metropolitan fiber rings that move broadband capacity closer to the customer with 10 gigabit dense wave division multiplexing technology.

Progress Telecom’s parent company, Progress Energy, is a Fortune 250 diversified holding company headquartered in Raleigh, North Carolina. With more than 20,000 megawatts

of generation capacity and \$7 billion in annual revenues, Progress Energy and its subsidiaries collectively serve over 2.8 million customers across the Southeast.

As a major provider of telecommunications services in parts of the United States, Progress Telecom provides services to its customers through its own facilities and, where business dictates, combines or interconnects these facilities with the services and/or facilities offered by the incumbent LECs. Accordingly, Progress Telecom is critically interested in the outcome of this proceeding.

B. Summary of Progress Telecom's Position

The Communications Act, the *UNE Remand Order*, and the Commission's unbundling rules require the incumbent LECs to make generally available to requesting telecommunications carriers standalone unbundled network elements, including loop and dedicated transport. The legislature and the Commission did not intend to restrict the use or availability of these unbundled network elements; nor did the Commission require, as a precondition to obtaining UNEs, that requesting telecommunications carriers use the standalone UNEs to provide *only* wireline services. In fact, the opposite is true, as is clear from the Commission's expressed goal of encouraging the rapid introduction of competition in *all* markets. Thus, the incumbent LECs' refusal to provide UNEs to connect their wire centers or competitive carriers' collocation arrangements with wireless base stations flies in the face of the Commission's pro-competitive policies.

In the *UNE Remand Order*, the Commission found that competing carriers were impaired without access to UNEs, including unbundled dedicated transport. Among other things, the Commission concluded that self-provisioning transport was cost-prohibitive. The Commission

similarly found that there were no reasonable competitive alternatives to the incumbent LECs' dedicated transport. Nothing has changed in the intervening years to compel the Commission to alter its previous findings and conclusions. Competing carriers were impaired without access to dedicated transport then, and they remain impaired today. Accordingly, the Commission should steadfastly reject any attempt by the incumbent LECs to restrict the use and availability of UNEs. In particular, the Commission should continue to require the incumbent LECs to provide unrestricted UNEs to requesting telecommunications carriers, regardless of how the UNEs are ultimately used by them. More specifically, the Commission should insist that the incumbent LECs abide by the Commission's requirement that they provide UNEs, including loop and dedicated transport, to wireline carriers for the purpose of connecting the wireline carriers' collocation arrangements with their wireless customers' base stations.

Finally, Progress Telecom supports the positions and the arguments raised by the Fiber/Switch-Based CLEC Coalition² and CompTel in their respective comments. In particular, Progress Telecom agrees that the Commission should, at a minimum, continue to require unrestricted unbundled access to the current list of UNEs. Likewise, Progress Telecom agrees that unrestricted and nondiscriminatory access to combinations of UNEs, including EELs, should continue to be made available to requesting telecommunications carriers.

² The Fiber/Switch-Based CLEC Coalition is comprised of NuVox Inc., KMC Telecom, Inc., e.spire Communications, Inc., TDS MetroCom, Inc., Metromedia Fiber Network Services, Inc., and SNiP LiNK.

II. THE COMMISSION SHOULD CONTINUE TO REQUIRE THE INCUMBENT LECs TO PROVIDE STANDALONE UNBUNDLED NETWORK ELEMENTS, INCLUDING UNBUNDLED LOCAL LOOP AND UNBUNDLED DEDICATED TRANSPORT, WITHOUT ANY RESTRICTION.

In the *UNE Remand Order*,³ the Commission required the incumbent LECs to unbundle several network elements, including local loop and dedicated transport. The Commission did not impose any “use” restrictions on these UNEs. Notwithstanding the fact that the Commission has unambiguously required the incumbent LECs to unbundle dedicated transport and loop and make them available to requesting carriers without any restriction, several incumbent LECs, including BellSouth, recently have refused to provide requesting carriers with UNEs between the incumbent LECs’ wire centers and wireless cell sites or base stations.

Specifically, BellSouth has refused to provide loop and dedicated transport to Progress Telecom for the purpose of connecting Progress Telecom’s collocation arrangement and its wireless customers’ base stations or cell sites. BellSouth has contrived a hodge-podge of arguments—none of which has any factual or legal basis—to justify its denial of Progress Telecom’s UNE requests.

In a letter responding to Progress Telecom’s recent UNE requests, BellSouth lays out its untenable position:

For numerous reasons, BellSouth, as well as other ILECs, have consistently maintained that carriers may not purchase UNEs or convert special access to UNEs if such network elements will be used to ultimately provide wireless telecom services.

³ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 (1999) (*UNE Remand Order*).

First, the FCC has not done a requisite impairment analysis to determine whether wireless providers are impaired by not having access to UNEs. Second, converting special access circuits to UNEs for wireless services often violates the FCC's Safe Harbor Rules. Third, circuits between a switching center and a cell site do not fall within the FCC's definition of loop or transport. Finally, the issue of entitlement to UNEs for the provision of wireless services is squarely before the FCC as part of its Triennial Review. Until such time as the Commission decides this issue, BellSouth will continue to deny access/conversion to UNEs for the provision of wireless services regardless of whether the ordering carrier is a CMRS provider or CLEC.⁴

The incumbent LECs' arguments—and in particular, BellSouth's—are of course manifestly spurious for the reasons explained below.

A. There Are No "Use" Restrictions Imposed on Standalone UNEs

Nothing in the Communications Act of 1934, as amended (the "Communications Act"), the *UNE Remand Order*, or the Commission's rules even remotely suggests that a requesting carrier must use the standalone UNEs for the provision of *wireline* services in order to obtain them from the incumbent LECs. Rather, the Communications Act, the *UNE Remand Order*, and the Commission's rules contemplate the widespread and unrestricted availability of UNEs. Indeed, in the *UNE Remand Order*, the Commission explicitly stated that the unbundling standards it was adopting sought to encourage "the rapid introduction of competition in *all* markets" and create incentives for both incumbent LECs and requesting carriers "to invest and innovate in new technologies."⁵ Notably absent from the Commission's analysis was a distinction between *wireline* and *wireless* services. Indeed, any restriction on the availability and

⁴ Letter from Patrick C. Finlen, BellSouth, to Robin Smith-Moravec, Progress Telecom, dated March 12, 2002. A copy of this letter is attached hereto and incorporated herein by reference as *Exhibit A*.

⁵ *UNE Remand Order*, 15 FCC Rcd at 3702, para. 9 (emphasis added).

use of standalone UNEs would discourage the introduction of new and innovative services and would fly in the face of the Commission's expressed goal of creating opportunities for investment and innovation.

Nor do the Commission's rules contemplate that the requesting carrier must be a *wireline* carrier to obtain standalone UNEs. Indeed, section 251(c)(3) of the Communications Act imposes upon incumbent LECs the "duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."⁶ *Wireless* carriers, including commercial mobile radio service ("CMRS") providers, are "requesting telecommunications carriers" that use incumbent LECs' UNEs to provide "telecommunications service."

Even assuming, *arguendo*, that a carrier's ability to procure UNEs from the incumbent LECs hinged on its classification as a *wireline* carrier—a qualification that has no legal or factual basis and which Progress Telecom vehemently opposes—there is simply no legitimate legal basis to deny a *wireline* carrier's UNE requests if the requested UNEs will be used to provide telecommunications service to its customers. The fact that the *wireline* carrier's ultimate customer is a *wireless* carrier should have absolutely no bearing on whether the *wireline* carrier is entitled to obtain UNEs to serve that customer.

⁶ 47 U.S.C. § 251(c)(3).

B. The Commission's Special Access "Safe Harbor" Rules Do Not Apply To Standalone UNEs

The incumbent LECs have argued that UNEs connecting wireless carriers' cell sites to the incumbent LECs' wire centers and/or the CLECs' collocation arrangements violate the Commission's "safe harbor" rules. True to form, the incumbent LECs have not fully articulated why the Commission's special access safe harbor rules are implicated, much less violated, in this particular instance. In fact, the incumbent LECs cannot legitimately justify their position based upon the limiting principles articulated by the Commission in the *Supplemental Order Clarification*.⁷

In the Commission's *Supplemental Order Clarification*, the Commission took three principal actions. First, it extended the temporary constraint identified in its prior *Supplemental Order*, in which it restricted conversion of special access to *combinations* of unbundled loop and transport UNEs.⁸ Second, it explained what constitutes a "significant amount of local exchange service" and established "safe harbor" rules for special access conversions.⁹ Finally, it clarified that incumbent LECs must allow requesting carriers to self-certify that they are providing a significant amount of local exchange service over *combinations* of unbundled network elements.¹⁰

⁷ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 00-183, Supplemental Order Clarification (rel. June 2, 2000), 15 FCC Rcd 9587 (2000) (*Supplemental Order Clarification*).

⁸ *Supplemental Order Clarification*, 15 FCC Rcd at 9597, para. 18.

⁹ *Supplemental Order Clarification*, 15 FCC Rcd at 9598, para. 22.

¹⁰ *Supplemental Order Clarification*, 15 FCC Rcd at 9602, para. 29.

Progress Telecom has requested standalone, unbundled UNE loop and UNE dedicated transport. It has not requested a *combination* of dedicated transport and loop or Enhanced Extended Links ("EELs"), nor has it requested conversion of an existing special access circuit to an EEL combination.

Nothing in the *Supplemental Order Clarification* even remotely suggests that *standalone* UNEs are subject to the Commission's "safe harbor" rules. The *Supplemental Order Clarification* speaks in terms of "combinations," not standalone UNEs. Thus, the incumbent LECs' calculated and deliberate attempt to engraft a contrived limiting qualification governing the use of standalone UNEs is patently unlawful, unreasonable, and discriminatory, particularly where the *Supplemental Order Clarification* itself very clearly does not contemplate such limitations.

C. The Incumbent LECs' Rigid and Narrow Interpretation of UNEs Is Unwarranted

The incumbent LECs have improperly construed the definitions of unbundled network elements to circumvent their obligation to provide UNEs to requesting carriers. In particular, the incumbent LECs posit that the circuit between a wire center and a cell site does not fall within the Commission's definition of dedicated transport. They argue that dedicated transport connects wire centers and switches, and cell sites are neither wire centers nor switches. This argument proceeds from a fundamental misconception of base stations. In fact, base stations perform functions that are equivalent to those performed by wire centers and switches. For example, base stations perform call origination and call termination functions.

The circuit connecting a wireless base station to an incumbent LEC wire center or a CLEC collocation arrangement meets the definition of dedicated transport. The Commission defines dedicated transport as follows:

(d)(1) Interoffice transmission facility network element includes:

(i) Dedicated transport, defined as incumbent LEC transmission facilities, including all technically feasible capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers, or between switches owned by incumbent LECs or requesting telecommunications carriers;¹¹

There can be no question that the circuit between a wireline carrier's collocation arrangement and a wireless customer's cell site meets this definition. First, the circuit is an incumbent LEC facility. Second, the circuit is dedicated to a particular customer or carrier (*i.e.*, the requesting wireline carrier's wireless customer). Finally, because cell sites perform switching functions, as explained above, the circuit is used to provide telecommunications between wire centers or switches.

III. TO THE EXTENT THAT THE COMMISSION'S CURRENT UNBUNDLING RULES DO NOT CONTEMPLATE THE PROVISION OF UNEs TO REQUESTING WIRELINE CARRIERS FOR THE PURPOSE OF PROVISIONING TELECOMMUNICATIONS SERVICE TO WIRELESS CARRIERS, THE COMMISSION SHOULD EXPAND ITS UNBUNDLING RULES.

In the *NPRM*, the Commission asks whether the facilities connecting the wireless carriers' base stations to the incumbent LECs' wire centers fit within the current definition of

unbundled dedicated transport and, if not, whether the Commission should modify the definition to include the unbundling of these facilities.¹² The Commission also seeks comment on “the benefits and burdens resulting from continuing these unbundling requirements and whether there are alternative, less burdensome options available to achieve the goals of the Act.”¹³

As Progress Telecom explained in Section II of these comments, the Communications Act, the *UNE Remand Order*, and the Commission’s rules require incumbent LECs to provide UNEs to connect wireless base stations to incumbent LEC or CLEC wire centers. In particular, the facilities used for this purpose meet the definition of unbundled dedicated transport.¹⁴

To the extent that the current definition of dedicated transport cannot be reasonably read to encompass the facilities between wireless base stations and incumbent LEC or CLEC wire centers—and Progress Telecom submits that the current definition is already clear on its face—Progress Telecom suggests a minor modification to clarify the original intent of the Communications Act and the Commission’s rules. Specifically, in order to prevent linguistic manipulations by the incumbent LECs, the definition of dedicated transport should include the terms “mobile switching centers,” “cell sites,” and “base stations”. Thus:

(d)(1) Interoffice transmission facility network element includes:

(i) Dedicated transport, defined as incumbent LEC transmission facilities, including all technically feasible

¹¹ 47 C.F.R. § 51.319(d).

¹² *NPRM* at 30, para. 61.

¹³ *Id.*

¹⁴ In fact, the use of the word “continuing” by the Commission in this *NPRM* suggests that the Commission contemplated that dedicated transport would encompass the facilities requested by Progress Telecom. “Continuing” suggests a present, ongoing obligation.

capacity-related services including, but not limited to, DS1, DS3 and OCn levels, dedicated to a particular customer or carrier, that provide telecommunications between wire centers owned by incumbent LECs or requesting telecommunications carriers *or their customers*, or between switches owned by incumbent LECs or requesting telecommunications carriers *or their customers, including wireless mobile switching centers, cell sites, and base stations*.

The Commission asks whether there are alternatives or less burdensome options available to achieve the goals of the Communications Act. Regrettably, there are none. Consequently, as it did over two years ago, the Commission should reject the incumbent LECs' invitation to modify its unbundling rules.

In the *UNE Remand Order*, the Commission made the following findings and conclusions concerning dedicated transport:

- Requesting carriers are impaired without access to unbundled dedicated transport network. Self-provisioning ubiquitous interoffice transmission facilities, or acquiring these facilities from non-incumbent LEC sources, materially increases a requesting carrier's costs of entering a market or of expanding the scope of its service, delays broad-based entry, and materially limits the scope and quality of a requesting carrier's service offerings.¹⁵
- Self-provisioned transport, or transport from non-incumbent LEC sources, is not sufficiently available as a practical, economic, and operational matter to warrant exclusion of interoffice transport from an incumbent LEC's unbundling obligations.¹⁶
- Although the record indicates that CLECs have deployed interoffice transport facilities along selected point-to-point routes, primarily in dense market areas, these facilities are not available, as a practical, economic, and operational matter, such that a requesting carrier's ability to provide the services it seeks to offer would not be impaired without access to the incumbent's ubiquitous interoffice

¹⁵ *UNE Remand Order*, 15 FCC Rcd at 3842, para. 321.

¹⁶ *Id.*

transmission facilities. Specifically, the competitive transport facilities that current exist do not interconnect all of an incumbent LEC's central offices and all interexchange carrier's point of presence within an MSA, or a substantial portion thereof.¹⁷

- Evidence in the record undermines the incumbents' suggestion that competitive fiber is sufficiently available that transport should not be unbundled.¹⁸
- Despite the evidence of some competitively deployed interoffice transmission facilities, lack of access to the incumbent's dedicated transmission facilities impairs a requesting carrier's ability to provide the services it seeks to offer. Only at a granular, wire center-by-wire center level does the record show the presence of competitive alternatives to the incumbent's interoffice transport, albeit on a non-ubiquitous basis. Thus, without access to unbundled dedicated transport, requesting carriers would be forced to create a patchwork of alternative network facilities, where they have been deployed and are being offered to other carriers, or alternatively to construct their own transport facilities.¹⁹
- Although the incumbents' evidence shows that nearly 30,000 route miles of fiber have been deployed in the top 50 MSAs, there are few, if any alternative transport facilities outside the incumbent LECs' networks that connect all or most of an incumbent LEC's central offices and interexchange carriers' point of presence within an MSA. Even where competitive alternatives exist, the alternatives generally do not travel the same routes as the incumbent's facilities. Thus, even if competitors were able to purchase indirect routing from alternative providers, to the extent alternatives exist, competitors more than likely have to route their traffic along indirect, inefficient routing patterns, thereby increasing their costs of transport.²⁰
- The costs of self-provisioning dedicated transport facilities materially diminish a requesting carrier's ability to provide the service it seeks to offer. Replicating the incumbent's vast and ubiquitous transport network would be prohibitively expensive, and delay competitive entry. The material costs and delays associated with self-provisioning duplicate, ubiquitous transport facilities would impair a CLEC's ability to offer services to a broad base of consumers.²¹

¹⁷ *UNE Remand Order*, 15 FCC Rcd at 3846, para. 333.

¹⁸ *UNE Remand Order*, 15 FCC Rcd at 3848, para. 338.

¹⁹ *UNE Remand Order*, 15 FCC Rcd at 3849, paras. 340-341.

²⁰ *UNE Remand Order*, 15 FCC Rcd at 3850, para. 343.

²¹ *UNE Remand Order*, 15 FCC Rcd at 3855, para. 355.

The factual predicates upon which the Commission based its findings and conclusions roughly two years ago have not changed. If anything, the availability of competitive options may have decreased in recent months in light of the bankruptcy of several competitive providers. Requesting carriers were impaired without access to unbundled dedicated transport two years ago, and they remain impaired today. These findings and conclusions support the continued unbundling of dedicated transport, regardless of how dedicated transport is ultimately used by the requesting telecommunications carrier. Indeed, if wireline carriers are impaired in the provision of telecommunications services to their wireline customers without access to transport, it is beyond doubt that they are similarly impaired in the provision of telecommunications services to their wireless customers without such access. As explained by Progress Telecom above, the Commission, cognizant of this general impairment, neither contemplated nor imposed any use restrictions on the availability of standalone UNEs in the *UNE Remand Order*. The Commission should continue to refrain from limiting the availability and use of standalone UNEs in this proceeding.

IV. THE COMMISSION SHOULD REJECT ANY ATTEMPT BY THE INCUMBENT LECs TO UNDERMINE THE PRINCIPLES AND CONCLUSIONS UNDERLYING THE COMMISSION'S *UNE REMAND ORDER*.

In passing the Telecommunications Act of 1996 (the "1996 Act"), Congress overhauled the antiquated regulatory scheme that applied to telecommunications carriers. The 1996 Act established a pro-competitive regulatory framework to pry open the telecommunications markets that had previously been closed to competitive carriers. In the *Local Competition First Report*

and Order²² and the subsequent *UNE Remand Order*, the Commission implemented the pro-competitive mandates of the 1996 Act by, among other things, establishing a national list of UNEs that the incumbent LECs must make available to their competitors. In both instances, the Commission was guided by an overarching belief—a belief that the ability of requesting carriers to use unbundled network elements, including various combinations of unbundled network elements, is integral to achieving Congress’ objective of promoting rapid competition to all consumers in the local telecommunications market.²³

In the *UNE Remand Order*, the Commission articulated the principles that guided its conclusions:

We believe that the “necessary” and “impair” standards we adopt below address the Supreme Court’s mandate and implement the statutory language and goals of the Act. The standards we adopt take into consideration alternatives outside the incumbent LEC’s network, and whether those alternatives are actually available to the requesting carrier as a practical, economic, and operational matter. We consider not only the direct costs, but also other costs and impediments associated with using alternative elements that may constitute barriers to entry. We believe the Commission must assess these factors to determine the availability of alternatives, and whether access to the incumbent’s network element thereby satisfies the “necessary” and “impair” standards of section 251(d)(2).

The unbundling standards we adopt in this Order also seek to encourage the rapid introduction of competition in all markets, including residential and small business markets. They seek to

²² *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition First Report and Order*), aff’d in part and vacated in part sub non., *Competitive Telecommunications Ass’n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utils. Bd. V. FCC*, 120 F.3d 753 (8th Cir. 1997), aff’d in part and remanded, *AT&T v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999).

²³ See *UNE Remand Order*, 15 FCC Rcd at 3700, para. 5.

create incentives for both incumbents and requesting carriers to invest and innovate in new technologies by establishing a mechanism by which regulatory obligations to provide access to network elements will be reduced as alternatives to the incumbent LEC's network elements become available in the future. In addition, the standards provide reasonable certainty regarding the availability of unbundled elements, thereby allowing requesting carriers to attract investment capital and move forward with implementing national and regional business plans that will allow them to serve the greatest numbers of consumers.²⁴

These guiding principles were sound then, and are sound now. What was true then, remains true today. Likewise, the overarching goals of Congress' and the Commission's pro-competitive mandates have not been achieved—not for lack of enthusiasm or participation by competitive carriers, but because the incumbent LECs have somehow succeeded in blocking competition at every turn.

It is precisely because the full and irreversible competition envisioned by Congress and the Commission has not been achieved that the Commission must remain committed to ensuring the availability of unrestricted UNEs. The Commission must steadfastly dismiss any attempt by the incumbent LECs to extinguish their unbundling obligations, lest we return to the *status quo ante*. Progress Telecom agrees with the Fiber/Switch-Based CLEC Coalition that the Commission should maintain the approach adopted in the *UNE Remand Order* in undertaking its unbundling analysis and in interpreting the “necessary” and “impair” standards of the Communications Act.²⁵

²⁴ *UNE Remand Order*, 15 FCC Rcd at 3701-3702, paras. 8-9.

²⁵ Comments of Fiber/Switch-Based CLEC Coalition at 17.

To this end, it is imperative that the Commission continue to require, at a minimum, unrestricted access to existing standalone UNEs. Progress Telecom supports CompTel's and the Fiber/Switch-Based UNE Coalition's position that the availability of UNEs should not hinge on the type of service that is provided over those facilities.²⁶

It is also critical to competition that the Commission continue to mandate access to combinations of unbundled network elements, such as EELs. Progress Telecom supports CompTel's position that the unrestricted use of EELs should be mandated,²⁷ including lifting the Commission's current restrictions on co-mingling.²⁸

The ubiquitous and irreversible competition envisioned by Congress is not yet a reality today. That is not to say that Congress' goal is not achievable. To attain this goal ultimately, however, the Commission must remain committed to its pro-competitive policies. Now is *not* the time to curtail the obligations that this Commission imposed upon the incumbent LECs over two years ago. If anything, given the current state of competition, the Commission should vigorously and diligently enforce the obligations to which the incumbent LECs are currently subject. Any attempt to limit the incumbent LECs' present obligations—such as imposing new restrictions on the use of UNEs or reducing the number of available UNEs—will reverse the important gains that the competitive industry painstakingly has accrued.

²⁶ Comments of CompTel at 93; Comments of Fiber/Switch-Based CLEC Coalition at 47, 52.

²⁷ Comments of CompTel at 90, 92.

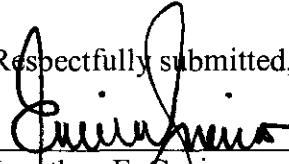
²⁸ Comments of CompTel at 98.

V. CONCLUSION

Despite the clear mandates of the Communications Act, the *UNE Remand Order*, and the Commission's rules, the incumbent LECs have refused, and continue to refuse, to provide requesting telecommunications carriers, and in particular, Progress Telecom, with unbundled network elements (specifically, dedicated transport and loop) to connect their collocation arrangements with their wireless customers' base stations. Carriers, such as Progress Telecom, are entitled to these UNEs because they are requesting telecommunications carriers under applicable law, and the facilities they request fit within the Commission's current definitions of UNEs. The Commission should continue to require incumbent LECs to unbundle loop and dedicated transport, including the facilities used to connect wireless base stations. The factual predicates upon which the Commission based its earlier findings and conclusions relating to these UNEs—including but not limited to dedicated transport—have not changed. Consequently, UNEs, including the facilities used to connect wireless base stations (whether they be loop or dedicated transport) must continue to be made available to requesting carriers on an unbundled basis. Likewise, the analyses, principles, conclusions, and findings that underlie the Commission's general unbundling policy articulated in the *UNE Remand Order* remain sound today, and should inform the Commission's analysis in this proceeding.

Accordingly, the Commission should reject the incumbent LECs' invitation to restrict the availability of unbundled network elements or nullify the pro-competitive policies articulated in the *UNE Remand Order*.

Respectfully submitted,



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**COUNSEL FOR PROGRESS TELECOM
CORPORATION**

Dated: April 5, 2002

Progress Telecom Corporation
CC Docket No. 01-338
Comments
April 5, 2002

EXHIBIT A

LETTER FROM BELL SOUTH REJECTING UNE REQUEST

Interconnection Services

675 West Peachtree St. NE
Room 34S91
Atlanta, GA 30375

Patrick C. Finlen
(404) 829-7439
Fax: (404) 829-7413

March 12, 2002

Robin Smith-Moravec
Progress Telecommunications Corporation
100 Second Avenue South
Suite 400 South
St. Petersburg, FL 33701

Dear Ms. Smith-Moravec:

It has come to my attention that Progress Telecommunications Corporation ("Progress") is attempting to order Unbundled Network Elements ("UNEs") from several of its collocation sites to a wireless telecom provider's collocation sites. It is my understanding that the wireless telecom provider is Alltel. The Serving Wire Centers for these collocation sites are 104 North 4th Street and 1642 South College Road, Wilmington NC. I have also been informed that Progress is requesting that BellSouth provide UNE Loops from its collocation arrangement to a wireless telecom provider's cell site.

For numerous reasons, BellSouth, as well as other ILECs, have consistently maintained that carriers may not purchase UNEs or convert special access to UNEs if such network elements will be used to ultimately provide wireless telecom services.

First, the FCC has not done a requisite impairment analysis to determine whether wireless providers are impaired by not having access to UNEs. Second, converting special access circuits to UNEs for wireless services often violates the FCC's Safe Harbor Rules. Third, circuits between a switching center and a cell site do not fall within the FCC's definitions of loop or transport. Finally, the issue of entitlement to UNEs for the provision of wireless services is squarely before the FCC as part of its Triennial Review. Until such time as the Commission decides this issue, BellSouth will continue to deny access/conversion to UNEs for the provision of wireless services regardless of whether the ordering carrier is a CMRS provider or CLEC.

Furthermore, pursuant to your Interconnection Agreement a UNE Loop is a "transmission facility between a distribution frame (or its equivalent) in BellSouth's central office and the loop demarcation point at an end-user customer premises..." [Emphasis added] Since a carrier cannot be considered an end-user, what you are requesting is in violation of our Interconnection Agreement.

Robin Smith-Moravec
March 11, 2002
Page 2 of 2

Although UNEs may not be used to provide wireless services, Progress may use BellSouth's tariffed services to provide transport to a wireless cell site.

Please call me should you have any questions regarding this issue. I can be reached at 404-927-7506

Sincerely,

A handwritten signature in black ink, appearing to read "P. Finlen".

Patrick C. Finlen
Managing Director

Copy to: Leah Cooper Esq.
Jerry Hendrix
Charleen Bunn
John Hamman

CERTIFICATE OF SERVICE

I, Beverly Harper-Jones, hereby certify that I have caused a copy of the foregoing "Comments of Progress Telecom Corporation," in CC Docket No. 01-338 to be served on this 5th day of April 2002, via hand delivery, upon the following:

Michael K. Powell, Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Kathleen Q. Abernathy, Commissioner
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Michael J. Copps, Commissioner
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Kevin J. Martin, Commissioner
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Kyle D. Dixon, Legal Advisor
Chairman Michael K. Powell
Federal Communications Commission
445 Twelfth Street, SW
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Bryan Tramont, Sr. Legal Advisor
Commissioner Kathleen Q. Abernathy
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Washington, DC 20554

Daniel Gonzalez, Sr. Legal Advisor
Commissioner Kevin J. Martin
Federal Communications Commission
445 Twelfth Street, SW
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Beverly Harper-Jones